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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY;
CASCADIA WILDLANDS; NATIVE FISH
SOCIETY,

Plaintiffs,

v.

PETER DAUGHERTY, in his official
capacity as Oregon State Forester;
KATHERINE SKINNER, in her official
capacity as District Forester for the Tillamook
District; MICHAEL CAFFERATA, in his
official capacity as District Forester for the
Forest Grove District; DANIEL GOODY, in
his official capacity as District Forester for the
Astoria District,

Defendants.

Case No. 3:18-cv-01035-MO

DEFENDANTS' MOTION TO EXTEND
THE STAY OF LITIGATION PENDING
COMPLETION OF THE HCP PROCESS

And
OREGON FOREST INDUSTRIES
COUNCIL,

Intervenor-Defendant.

And
TILLAMOOK COUNTY,

Intervenor-Defendant.

CONFERRAL

Counsel for defendants conferred with the parties by telephone on June 17, 2021. Plaintiffs' counsel stated that Plaintiffs will oppose this Motion and intend to file a response in opposition in accordance with Local Civil Rule 7(e)(1). Intervenor-defendants do not oppose the Motion.

MOTION

Defendants move the court for an order extending the stay of litigation in this matter until such time as the Western Oregon State Forests Habitat Conservation Plan (HCP) process, now reaching its final stages, is completed. Defendants anticipate that the HCP will likely be approved by the Oregon Board of Forestry, as well as the federal agencies with jurisdiction over affected species, in 2023.

In support of this Motion, defendants rely on the Court's inherent power to control its docket in the interest of justice and judicial efficiency, defendants' prior motions and declarations, the Declarations of Liz Dent and Doug Grafe (filed concurrently with this motion), the following memorandum in support, and publicly available information on the COVID-19 pandemic, the drought and concomitant fire risks and concerns in Oregon and throughout the Western states, and the status of the HCP currently under review pursuant to the National Environmental Policy Act (NEPA).¹

¹ <https://www.oregon.gov/odf/aboutodf/Pages/HCP-initiative.aspx>

MEMORANDUM IN SUPPORT

In April 2020, defendants moved for a stay to conserve the resources of the Oregon Department of Forestry (ODF) then under extreme stress from the global pandemic, the ongoing effort to prepare the Western Oregon State Forests HCP, and the then-impending 2020 fire season. Defendants informed the court and the parties that, in the event the HCP process proceeded as expected, defendants likely would seek extensions of the stay because implementation of an HCP and the Incidental Take Permit (ITP) that accompanies it, directly impact the subject matter of this case and likely will render the case moot. Subsequently, the court granted two extensions.²

The current stay of litigation expires on July 15, 2021. The Declaration of Liz Dent, Chief of the State Forests Division of ODF, establishes that the HCP process is on track to a successful conclusion. After completing Phases 1 and 2, which involved data gathering, scoping, and strategy development, the Oregon Board of Forestry directed ODF to continue with Phase 3. A key Phase 3 milestone has been met with the preparation of a draft HCP document submitted to the federal agencies, NOAA Fisheries and the U.S. Fish and Wildlife Service (collectively, the Services) in March 2021.

The Services then commenced the NEPA review process, including taking public comment and preparing a draft Environmental Impact Statement. NOAA, the lead federal agency, updated its work schedule for the HCP process which presently anticipates issuance of the Services' "Records of Decision" in December 2022. Decl. of Dent, ¶¶ 6-7 and Exh. 1101 (project schedule; also available on the webpage link provided in fn. 1 *supra*). The reasonable expectation that the HCP and corresponding ITP will come to fruition is grounds to avoid

² The original stay expired on October 30, 2020. Defendants sought a short extension, until December 29, 2020, due to the extraordinary conditions arising from the 2020 Labor Day fires. The court then extended the stay until July 15, 2021, on defendants' unopposed motion.

diverting staff and resources from the HCP and, most importantly, fire recovery, fire planning, and firefighting, to reinitiation of defense in this litigation.

Ms. Dent's declaration also demonstrates that the resource constraints on ODF continue at critical levels. While the challenges from the work-related COVID-19 impacts have lessened, significant issues are expected to continue, including closure of ODF's offices and remote work for most employees. *Id.*, ¶ 9. ODF's resource specialists must continue to commit substantial time to the ongoing restoration activities on the Santiam State Forest in response to last year's devastating fire season and this year's fire season will likely involve levels of ODF resources that will put additional strain on the agency. *Id.*, ¶ 10.

The Declaration of Doug Grafe provides additional details and support for extension of the stay on the grounds of critical resource constraints. The 2021 fire season is already underway – which is 6 weeks earlier than is normal and has resulted in twice the number of fires compared to the 10 year average. Decl of Grafe, ¶ 3. Widespread drought signifies high risk for another catastrophic season. *Id.*, ¶ 4. ODF is diligently deploying resources in planning for use of COVID-19 protocols and enabling efficient and effective response to fires anywhere in the State. *Id.*, ¶ 5.

CONCLUSION

Reinitiating litigation in this case under the present circumstances will impose an undue burden on defendants, particularly when the HCP process, which will moot the case in its

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entirety, is on track for timely completion. Therefore, defendants request that the court order the **stay of this litigation continue for the duration of the HCP process** or until sooner lifted for good cause.

DATED June 17, 2021.

Respectfully submitted,

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s/ Darsee Staley

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